S T A T E O F M I C H I G A N

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of THE DETROIT EDISON COMPANY for Authority to reconcile its Renewable Energy Plan costs associated with the Plan approved in Case No. U-15806-RPS	)))))	Case No. U-16356

NOTICE OF PROPOSAL FOR DECISION

The attached Proposal for Decision is being issued and served on all parties of record in the above matter on July 21, 2011.

Exceptions, if any, must be filed with the Michigan Public Service Commission, P.O. Box 30221, 6545 Mercantile Way, Lansing, Michigan 48909, and served on all other parties of record on or before August 11, 2011, or within such further period as may be authorized for filing exceptions. If exceptions are filed, replies thereto may be filed on or before August 25, 2011. **The Commission has selected this case for participation in its Paperless Electronic Filings Program. No paper documents will be required to be filed in this case.**

At the expiration of the period for filing exceptions, an Order of the Commission will be issued in conformity with the attached Proposal for Decision and will become effective unless exceptions are filed seasonably or unless the Proposal for Decision is reviewed by action of the Commission. To be seasonably filed, exceptions must reach the Commission on or before the date they are due.

MICHIGAN ADMINISTRATIVE HEARING SYSTEM
For the Michigan Public Service Commission

Theresa Sheets

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Theresa A. Sheets
Administrative Law Judge

July 21, 2011
Lansing, Michigan

S T A T E O F M I C H I G A N

MICHIGAN ADMINISTRATIVE HEARING SYSTEM

FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

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PROPOSAL FOR DECISION

I.

HISTORY OF PROCEEDINGS

On August 31, 2010, pursuant to MCL 460.1001 et seq (2008 PA 295) and various Michigan Public Service Commission (MPSC or Commission) orders, The Detroit Edison Company (Detroit Edison) filed an application, with supporting testimony and exhibits, requesting authority to reconcile its Renewable Energy Plan (REP) costs associated with the REP approved in MPSC Case No. 15806-RPS. In its application, Detroit Edison requested approval of its Renewable Cost Reconciliation, continued approval of its renewable energy Transfer prices for recovery under its Power Supply Cost Recovery (PSCR) process pursuant to MCL 460j, continued authority to implement existing Revenue Recovery Mechanism Surcharges, and other related relief.

Administrative Law Judge Daniel E. Nickerson, Jr. (ALJ Nickerson) held a pretrial conference on October 13, 2010, at which time he granted petitions to intervene filed by the Association of Businesses Advocating Tariff Equity (ABATE), Michigan Environmental Council and Environmental Law & Policy Center (MEC and ELPC), and Attorney General Michael A. Cox (AG). The Commission Staff (Staff) also participated in the proceedings. This matter was reassigned to Administrative Law Judge Theresa A. Sheets (ALJ Sheets) on December 14, 2010.

An evidentiary hearing was conducted before ALJ Sheets on March 22, 2011. The testimony and exhibits of the parties were bound into the record without cross-examination. Detroit Edison presented the testimony of the following witnesses: Ajay Gupta, Angela Wojtowicz, Martin L. Heiser, Kenneth D. Johnston, Theresa M. Uzenski, and Irene D. Dimitry. The AG presented the testimony of Michael J. McGarry, Sr., and Staff presented testimony of Julie Baldwin, Katherine Trachsel, and Jesse J. Harlow. The record in this case consists of 249 pages of transcript and 15 exhibits. Detroit Edison, Staff, the AG and MEC filed initial briefs by April 21, 2011. On May 12, 2011, Detroit Edison filed a reply brief.

II.

TESTIMONY AND POSITIONS OF THE PARTIES

This proceeding was commenced pursuant to section 49 of the Clean, Renewable, and Efficient Energy Act, PA 2008 295 (Act 295) which provides for

the commencement of an annual proceeding to be known as a Renewable Cost Reconciliation for each electric provider, such as Detroit Edison, whose rates are regulated by the Commission. Pursuant to MCL 460.1049(3), the Commission is required to reconcile the pertinent revenues recorded and the allowance for the nonvolumetric revenue recovery mechanism with the amounts actually expensed and projected according to Detroit Edison's plan for compliance. In its order, the Commission is required to,

> (a) Make a determination of Detroit Edison's compliance with the renewable energy standards, subject to section 31 (MCL 460.1031) of 2008 PA 205;
>
> (b) Adjust the revenue recovery mechanism for the incremental costs of compliance (ensuring that the retail rate impacts under this renewable cost reconciliation revenue recovery mechanism do not exceed the maximum retail rate impacts specified under section 45 and ensure that the recovery mechanism is projected to maintain a minimum balance of accumulated reserve so that a regulatory asset does not accrue);
>
> (c) Establish the price per megawatt hour for renewable energy and advanced, cleaner energy capacity and for renewable energy and advanced cleaner energy to be recovered through the power supply cost recovery clause under section 6j of 1939 PA 3, MCL 460.6j, and as outlined in section 47(2)(b)(iv), MCL 460.1047; and
>
> (d) Adjust, if needed, the minimum balance of accumulated reserve funds established under section 21, MCL 460.1021.

MCL 460.1049(3)

The following is an analysis of the testimony, exhibits, and briefs submitted by the parties in support of the reconciliation.

A. Compliance with Renewable Energy Standards

The first issue to be determined is Detroit Edison's compliance with renewable energy standards. MCL 460.1049(3)(a). Because it is an electric utility with 2,000,000 or more retail customers in this state as of January 1, 2008, Detroit Edison is required to comply with MCL 460.1027(1)(b) which provides for a target energy capacity portfolio. MCL 460.1027(3) also requires Detroit Edison to achieve a certain target renewable energy credit portfolio.

At this time, there is no renewable energy standard compliance requirement for Detroit Edison for 2009. Pursuant to MCL 460.1027, Detroit Edison will not be required to demonstrate compliance with certain renewable energy standards until 2012.

Katherine Trachsel, MPSC auditor, employed in the Renewable Energy Section of the Electric Reliability Division testified that Detroit Edison is in compliance with the renewable energy standards as outlined in the Act and, further, testified that Detroit Edison has established itself as an Account Holder within the MIRECS and banked renewable energy credits throughout 2009.

The AG and MEC do not challenge the testimony of Detroit Edison or Staff witnesses.

B. Adjustment of Revenue Recovery Mechanism for the Incremental Cost of Compliance

The second matter to be determined is whether Detroit Edison's incremental costs of compliance are reasonable and prudent and whether the

revenue recovery mechanism requires adjustment based on Detroit Edison's actual incremental costs of compliance. MCL 460.1049(3)(b).

Pursuant to MCL 460.1047, electric providers, such as Detroit Edison, are entitled to recover, through their retail electric rates, all of the provider's incremental costs of compliance during the 20-year period beginning when the electric provider's REP is approved by the Commission, as well as all reasonable and prudent ongoing costs of compliance during and after that period. MCL 460.1047(1). The costs to be evaluated in calculating the incremental cost of compliance are set forth in 460.1047(2)(a).

MCL 460.1049(3)(b) requires the Commission to adjust the revenue recovery mechanism for the incremental costs of compliance which was established in Detroit Edison's REP. In doing so, the Commission is required to ensure that the retail rate impacts under the renewable cost reconciliation revenue recovery mechanism do not exceed the maximum retail rate impacts specified under section 45 [MCL 460.1045]. The Commission is also required to ensure that the recovery mechanism is projected to maintain a minimum balance of accumulated reserve so that a regulatory asset does not accrue.

1. Incremental Costs of Compliance

Detroit Edison's Position

First, Detroit Edison asserts that the incremental costs of compliance for which its customers were charged during 2009 were reasonable, prudent, and consistent with Detroit Edison's Commission-approved Act 295 REP.

Detroit Edison's witness Martin L. Heiser, Consultant, Regulatory Economics in the Revenue Requirements Department of Regulatory Affairs, presented testimony related to Detroit Edison's actual Act 295 REP incremental cost of compliance and the amount projected by Detroit Edison in its Commission-approved REP. Mr. Heiser testified that incremental costs of compliance from 2007 through 2009 were $2.902 million and for 2009 alone were $2.793 million. 2 T 60; Exhibit A-6 Revised[1]. At the time Detroit Edison's REP was approved, the projected incremental costs of compliance were $2.123 million, leaving a $670,000 variance[2]. *Id;* Exhibit A-6 Revised.

In support of its claim that its incremental costs of compliance were reasonable and prudent, Detroit Edison presented the testimony of the following witnesses to detail the elements used by witness Heiser to determine incremental costs of compliance (as set forth in Exhibit A-6 Revised).

Detroit Edison's witness, Ajay Gupta, Controller for the Marketing and Customer Service groups, which includes the 2008 PA 295 Energy Optimization and Renewable Energy Activities of Detroit Edison, testified in support of Detroit Edison's incremental balances and expenses associated with implementing its REP through the year ending December 31, 2009. According to Mr. Gupta, in 2009, Detroit Edison incurred $1,774,099 in incremental costs associated with

[1] Exhibit A-6 Revised, is a compilation/summary of testimony and information set forth in the exhibits of Ajay Gupta, Angela P. Wojtowicz, Kenneth D. Johston, Theresa M. Uzenski, Irene M. Dimitry and Mr. Heiser, and depicts Mr. Heiser's calculation of incremental costs of compliance through 2009 utilizing information from those witnesses.

[2] According to the testimony of Detroit Edison's witness Irene M. Dimitry, the primary difference between the forecasted amount and the actual amount was the higher than projected O&M expenses related to labor, material and services costs associated with designing and implementing its REP. 2 T 159-160.

negotiating renewable energy contracts and other MCL 460.1033 contracts, changes to Detroit Edison's customer billing system for the Solar Currents program, non-fuel O&M costs associated with test burns of renewable fuels at existing power plants and some incremental general and administrative personnel costs for employees associated with the renewable energy program[3]. 2 T 25; Exhibit A-1. Mr. Gupta also testified that from 2007 through 2009, Detroit Edison incurred $8,723,700 in incremental costs associated with changes to billing systems for the Solar Currents program, Biofuels Pilot Costs, general and administrative personnel costs, preliminary surveys and investigations related to REP projects and IT labor costs, and $228,000[4] in costs incurred for purchase of RECs and ACECs in 2009. 2 T 27-29; Exhibit A-2. Mr. Gupta testified that he included incremental costs for the years 2007 and 2008 on Exhibit A-2 in calculating total incremental costs because he believed them to be eligible for deferral once Act 295 was enacted (October 6, 2008). 2 T 28-29.

Theresa M. Uzenski, Manager, Controller – Regulatory Accounting and Strategy, testified in support of the calculations and accounting issues related to the accounting treatment of Act 295 costs including (1) regulatory liability, (2) deferred taxes associated with the regulatory liability, and (3) RECs, IRECs and ACECs. Ms. Uzenski sponsored Exhibit A-12 Revised. In her testimony,

[3]The total amount of costs set forth in Mr. Gupta's Exhibit A-1 ($1,774,900) is incorporated into Mr. Heiser's Exhibit A-7 Revised and becomes part of the total costs set forth in Exhibit A-6 Revised used in calculating incremental costs of compliance.

[4] The total amounts set forth in Mr. Gupta's A-2 ($8,723,700 and $228,000) are incorporated into Mr. Heiser's Exhibit A-7 Revised where it is utilized to determine the net rate base (average) and pre-tax return on net rate base, and becomes part of the total costs set forth in Exhibit A-6 Revised used in calculating incremental costs of compliance.

Ms. Uzenski explained that revenue received from the Revenue Recovery Mechanism Surcharge (RRMS) in 2009 is netted against the 2007-2009 incremental costs of compliance less interest expense on the regulatory liability. 2 T 134. The residual balance is recorded as a regulatory liability ($31,332,100) because the RRMS revenue ($34,124,800) exceeded the incremental costs ($2,792,700 as set forth in the testimony and Exhibits of Martin L. Heiser above) during this period. *Id*; Exhibit A-8 Revised; Exhibit A-6 Revised. Ms. Uzenski further explained that because Detroit Edison collects taxable revenue through the RRMS that is netted with Incremental Costs of Compliance creating a regulatory liability, taxes must be paid on the net regulatory liability in the year the liability is accrued, which causes a deferred tax asset in the amount of $12,150,100. 2 T 136-137; Exhibit A-12 Revised.

Angela P. Wojtowicz, Supervisor, Generation Optimization, set forth Detroit Edison's Act 295 booked expense in 2009 for renewable capacity, energy, RECs and ACECs, and explained Detroit Edison's request to set the Transfer prices for the period 2010-2029 for Renewable Energy Contracts and Renewable Energy Systems approved by the Commission in 2010 and 2011. 2 T 34-54; Exhibits A-3, A-4 and A-5. Ms. Wojtowicz testified that Exhibit A-4 shows the renewable energy generation and expense for 2009, that will be recovered at the Transfer prices on Exhibit A-3 through Detroit Edison's PSCR mechanism. 2 T 37. The total transfer amount to PSCR set forth on Line 28 of

Exhibit A-4, $82,700, is deducted from the sum of costs to determine incremental cost of compliance.[5]

Staff's Position

Julie Baldwin, MPSC Manager of the Renewable Energy Section of the Electric Reliability Division, supported Detroit Edison's incremental costs of compliance with the exception of expenditures made prior to enactment of Act 295 in October of 2008, and accompanying carrying costs. 2 T 227-228. She argued that under the Commission's December 4, 2008 Temporary Order in Case No. U-15800, the Commission stated that it "intends to consider for cost recovery renewable energy plan start-up costs incurred by a provider prior to the date of approval of the provider's plan," but does not provide for recovery of costs incurred before the law was enacted. 2 T 228. Thus, she testified that Staff recommends $3,088,100 in expenditures (set forth on Exhibit A-2, page 2 of 3, line 12, Column (i)) be excluded from recovery under Act 295. 2 T 227. She further testified that Staff recommends carrying costs in the amount of $237,800[6] also be excluded from recovery. *Id* at 227-228.

[5] In addition, witness Heiser combined the total Power Purchase Agreement (PPA) costs (wind, biomass, LFG, solar) set forth on Ms. Wojtowicz's Exhibit A-4 ($82,700) with the total cost to purchase RECs for PPA contracts set forth in her Exhibit A-5 ($110,470) and used the combined sum ($193,200) as a cost of contracts included in incremental costs of compliance. See Exhibit A-6 Revised. Mr. Heiser similarly utilized the cost of purchase of RECs (REC-only contracts) ($117,485) set forth in Ms. Wojtowicz's Exhibit A-5 to calculate Capital, O&M, Financing, Interconnect & Ancillary costs set forth on line 2 of Exhibit A-6 Revised. See Exhibit A-7 Revised and A-6 Revised.

[6] Detroit Edison removed its request for these carrying costs in its revised exhibits and rebuttal testimony.

Katherine Trachsel, MPSC Staff auditor employed in the Renewable Energy Section of the Electric Reliability Division, further testified that Staff also recommends an adjustment to the incremental costs of compliance for the amount paid by Detroit Edison to Heritage Stoney Corners Wind Farm[7]. 2 T 236. Ms. Trachsel concurred with the testimony of witness Baldwin and proposed that this reconciliation should reflect actual energy and capacity delivered under the Heritage Renewable Energy Contract based upon invoice amounts rather than the estimated amounts recorded on Detroit Edison's books for 2009. 2 T 236-237.

AG and MEC Position

The AG and MEC concurred with Staff regarding these two issues and supported their recommendations. AG's witness, Michael J. McGarry, Sr., President and CEO of Blue Ridge Consulting Services, Inc. testified that the energy volume included in this case (U-16356 – 1,665.2 MWh) is an estimate which does not include energy purchased for December 2009. 2 T 185. Mr. McGarry testified that Detroit Edison reported 2009 actual renewable energy purchases were 3,790 MWh and indicated that Detroit Edison made correcting adjustments in 2010. *Id*

[7] This project/contract is referred to by the parties as the Detroit Edison/Heritage Contract, Heritage Stoney Corner Wind Farm project, Stoney Corner Wind Farm, Heritage Renewable Energy Contract and other related names.

Detroit Edison's Rebuttal

In rebuttal to the testimony of Staff, Martin L. Heiser took issue with 5 accounting matters discussed by Staff's witnesses. 2 T. 71-72. He also took issue with Staff's Exhibit S-1 because he argued, "it does not readily lend itself to verification that the provisions of 2008 PA 295 have been addressed," and points to several examples of language and terminology that are irregular in that they are not consistent with the statute.[8] 2 T 73. As to recovery of start up costs, witness Heiser also testified that Detroit Edison reconsidered recovery of certain costs incurred prior to enactment in October of 2008, and testified that "the Company continues to believe that 2008 PA 295 provides for the recovery of prudently incurred startup costs incurred prior to the date 2008 PA 205 enactment. Therefore, those costs continue to be included in the rate base amount I support." 2 T 75.

Kenneth D. Johnston, Consultant, Regulatory Affairs, testified in response to criticism from Staff and the AG over Detroit Edison's use of estimated energy and capacity expense amounts recorded on its books for the Heritage Renewable Energy Contract during December, 2009. He testified that Detroit Edison "uses accrual accounting and routinely records estimated expenses. These estimated amounts are subsequently reversed and actual amounts are ultimately recorded." 2 T 118. Thus, he testified that Detroit Edison believes

[8] Mr. Heiser argued that the formulation in Exhibit S-1 lacks terminology that conforms to the legislation (i.e. no line entitled incremental cost of compliance) and, thus does not lend itself to verify conformance with the law. *Id.* He notes that legislation requires that the interest on regulatory liability be used to fund the incremental costs of compliance, but that Exhibit S-1 adds interest to "something labeled 'Cumulative Over/(Under) Recovery', a term that is consistent with annual interest determinations or other reconciliations but is not addressed in 2008 PA 295." 2 T. 73.

that the estimated amounts that it actually recorded on the books should be used for the reconciliation. 2 T 119.[9]

Additionally, witness Johnston, with respect to recovery of pre-Act 295 expenditures, testified, "the Company believes that 2008 PA 295 only speaks to the period of time when the costs can be recovered through its retail sales (i.e. after plan approval and revenue recovery mechanism surcharges are in effect) and not when these reasonable and prudent costs can be incurred." 2 T 127. However, Mr. Johnston pointed out that "the Company has removed the recovery of these incremental costs of compliance from its presentation in this proceeding through Revised Exhibit A-6 of Witness Mr. Heiser." *Id.* He noted that Revised Exhibit A-6 "includes the $3.088 million of capital costs incurred prior to October 2008 but presents no determination of incremental costs of compliance prior to October 2008 (i.e. the return on the $3.088 million of reasonable and prudent start up costs)." *Id* at 128.

Finally, Irene M. Dimitry, in opposition to Staff's assertion that Detroit Edison cannot recover costs incurred prior to enactment of Act 295, testified that the start-up costs that are included in this reconciliation are the same start-up costs she described in Detroit Edison's REP Case No. U-15806-RPS. 2 T 168-169. She further argued that "[t]hrough its Orders on June 2nd and

[9] Mr. Johnston indicated that the estimates recorded in 2009 were trued up to the invoiced amounts in 2010 business and the adjustments should be reflected in the 2010 reconciliation. *Id.* He testified that if the Commission decides that the Staff's adjusted amounts should be used for the 2009 reconciliation, Detroit Edison will exclude the 2009 adjusting entry recorded in 2010 business from its 2010 renewable energy reconciliation filing, noting that the record is closed for Detroit Edison's 2009 PSCR Reconciliation (U-15677-R) and, depending on the Commission's order in that proceeding, Detroit Edison's 2010 PSCR and Renewable Energy Cost Reconciliation proceedings may or may not agree.

August 25th 2009, the Commission approved the Company's Renewable Energy Plan that included these start-up costs and no party took exception to the Company's prior efforts to accomplish the development of its wind generation assets." 2 T 169. She then testified that over the past 10 years, Detroit Edison has been encouraged and/or required to pursue the addition of renewable generation to its portfolio of generating assets and she cited to activities of the Governor, Legislature, and Commission, which she alleges gave utility providers, such as Detroit Edison, advanced notice that renewable energy generation portfolio standards were on the horizon.[10] *Id.*

2. Retail rate impacts, regulatory assets and revenue recovery mechanism surcharge

Second, Detroit Edison asserts that retail rate impacts have not been exceeded in 2009; that a regulatory asset has not, and is not forecasted to be, accrued; and that the currently approved revenue recovery mechanism surcharge is appropriate and should not be adjusted.

Detroit Edison's Position

Irene M. Dimitry testified that Detroit Edison is not proposing any changes to the Commission-approved RRMS.[11] 2 T 149. She testified that maintaining

[10] Ms. Dimitry then went on to explain that "it became clear to the Company that a renewable energy portfolio standard would ultimately be established although the specific attainment standards were somewhat uncertain. Given the relatively short time-frames being proposed for compliance, the significant investment and the relatively long lead time required to obtain easements and wind data, as well as construct wind farms, it was both necessary and prudent for the Company to commence renewable energy plan start-up activities in early 2007." 2 T 173.

[11] She pointed out that while Detroit Edison's 2009 activities resulted in some cost, timing, or volume variances from its REP, when netted together, these variances from its REP "do not reflect material differences from Detroit Edison's Commission-approved 2008 PA 295 Renewable

the approved level of RRMS will allow Detroit Edison to maintain a minimum balance of accumulated reserve so that a regulatory asset does not accrue. *Id.*

Kenneth D. Johnston, Consultant, Regulatory Economics, Pricing and Rate Design, also testified on behalf of Detroit Edison. According to Mr. Johnston's Exhibit A-11, the total surcharge revenue by class for 2009 was $34,124,849 and the projected revenue as set forth in Detroit Edison's REP was $35,320,436, creating a variance of ($1,195,587).[12] Mr. Johnston testified that it is premature to adjust the REP surcharges and noted that the renewable energy plan surcharges are already at their maximum level and, therefore, not in excess of the maximum retail impacts pursuant to MCL 460.1045(2). 2 T 87.

Staff, AG, and MEC Position

Staff, AG, nor MEC address or dispute Detroit Edison's position

C. Establishment of Price Per Megawatt Hour to be Transferred to PSCR

The third matter to be determined is the transfer price (price per Megawatt Hour) for renewable energy and advanced, cleaner energy capacity to be recovered through the power supply cost recovery clause under section 6j of 1939 PA 3, MCL 460.6j and as outlined in section 47(2)(b)(iv), MCL 460.1047.

Energy Plan that would impact the Company's projected Incremental Cost of Compliance and therefore allow the Company to reduce its approved Revenue Recovery Mechanism Surcharge." 2 T 149.

[12] According to Mr. Johnston's testimony, the RRMS collections for 2009 were slightly lower than projected due to lower projected sales levels and reduced bundled electric service customer counts which were driven by the economy and increased electric choice participation, resulting in lower actual revenues due to the fact that Detroit Edison's REP surcharge (REPS) only applies to bundles service customers. 2 T 85-86.

Detroit Edison's Position

Angela P. Wojtowicz, Supervisor of the Midterm Optimization group in the Generation Optimization department of the Regulated Marketing Organization testified that Detroit Edison is requesting that a single annual Transfer price, by technology, be utilized for all Renewable Energy Systems and/or Advanced Cleaner Energy Systems for all energy and capacity delivered in the year.[13] 2 T 37. Referencing Exhibit A-4, Ms. Wojtowicz testified that Line 11, entitled "Total PPA (Wind, Biomass, LFG, Solar)" reflects Detroit Edison's purchase of 1,665 MWh of wind-based renewable energy from the Stoney Corners Wind Farm in 2009, which was 1,665 MWh greater than planned because the wind farm began generating renewable energy prior to the projected December 31, 2009 commercial operation date. 2 T 40. She pointed out that the transfer prices shown on her Exhibit A-3 for Wind were approved for the Stoney Corners agreement in the December 1, 2009 MPSC order in Case No. U-15806. *Id.* She further testified that a transfer price of $49.66/MWh was used to determine an associated energy and capacity expense of $82,694 (1,665.2 MWh x $49.66 per MWh = $82,693) ($82.7 is reflected on Exhibit A-4)) for 2009 to be transferred to Detroit Edison's PSCR reconciliation. 2 T 37, 39-40; Exhibit A-3, Exhibit A-4.

[13] She testified that "[a] single price reflects the annual value versus a determination of on-peak/off-peak, seasonal, monthly, and/or hourly prices, and streamlines the billing and accounting for the renewable energy or advanced cleaner energy." 2 T 37.

AG's Position

The AG, through its witness, Michael J. McGarry, Sr., President and CEO of Blue Ridge Consulting Services, Inc., opposed the transfer price proposed by Detroit Edison. According to Mr. McGarry, he had two major concerns: (1) a utility should, in combination, not recover more than the costs it actually incurred for renewable energy delivered, and (2) a utility should transfer to its PSCR expense renewable energy costs the lower of its actual contract prices or the costs it would have incurred if the utility had dispatched more economic electric energy resources when cheaper, alternative energy resources were available. 2 T 187. Mr. McGarry testified that to establish the appropriate transfer price, the Commission must consider factors including, but not limited to (1) projected capacity, energy, maintenance, and operating costs; (2) information filed under section 6j of 1939 PA 3, MCL 460.6j; and (3) information from wholesale markets, including, but not limited to, locational marginal pricing (LMP). 2 T 191. He also testified that the Commission must set an annual actual transfer price in each annual RE Plan reconciliation case. *Id.* He further recommended that the Commission adopt a policy wherein the MPSC should transfer to a PSCR reconciliation, a price for renewable energy received and redelivered to PSCR customers that does not exceed the marginal costs that Detroit Edison would have incurred if the electricity it received from renewable energy resources had been received from available alternative resources. 2 T 192. According to Mr. McGarry, he reached that conclusion because "PSCR customers should not be forced to pay PSCR expenses greater than they would have paid under DECo's

economic dispatching procedure." *Id.* He argued that the difference between costs recoverable as PSCR expense via the transfer price and the total, reasonably and prudently incurred renewable energy costs would be recoverable as incremental costs of compliance. *Id.* He noted that his position is not in conflict with prior orders of the Commission because, "[o]n page 18 in its June 2, 2009 order in U-15806, the Commission said in relevant part: 'The Commission observes that in approving this plan, it is not approving any actual costs. All actual costs incurred for PPAs (including imputed debt) or for self-build generation are subject to Commission review for reasonableness and prudence.'" *Id.* Based on this opinion, Mr. McGarry indicated that "[t]he price used by DECo to report PSCR expense for renewable energy costs should be reduced to the applicable LMP prices because the approved actual renewable energy contract prices were higher than the alternatively available LMP costs." 2 T 197-198. Thus, he concluded that "the lower actual LMP prices should be included in the transfer price approved in this case under Section 49(3)(c)." 2 T 198. By reducing the Commission-approved transfer price of $49.66 by 45% (using the MISO LMP RTC price reduction 2009 plan to actual), Mr. McGarry arrived at a proposed transfer price of $27.31 MWh. *Id.* He applied that proposed transfer price to Detroit Edison's actual 2009 purchases (3,790.354 MWh), resulting in his proposed transfer of $103,514.57 to the PSCR. *Id.*

Staff's Position

Jesse J. Harlow, public utilities engineer in the Renewable Energy Section of the Electric Reliability Division at the MPSC, provided rebuttal testimony in

support of Detroit Edison's transfer price and in opposition to the testimony of AG's witness McGarry. Mr. Harlow explained the difference between a transfer price schedule, a transfer price, and a transfer price mechanism. 2 T 243-244. He testified that the transfer price schedule takes into account an LMP projection and gives value to the capacity of individual renewable generation technologies based on availability and generation frequency of the technology. *Id.* He further explained that the transfer price mechanism allows electric providers to recover costs for renewable energy and capacity and stay under the surcharge caps defined in Act 295 by establishing a schedule that sets the floor for recovery for each calendar year. 2 T 245. Mr. Harlow testified that transfer price schedules are based on long-term market price projections for energy and capacity so the transfer price mechanism provides a reasonable mechanism for developing electric providers' REPs and for cost recovery related to renewable energy contracts and PPAs. 2 T 245-246. Mr. Harlow disagreed with Mr. McGarry's position with respect to the application of the transfer price mechanism. He testified,

> MCL 460.1047(2)(b)(iv) clearly states that the price per megawatt hour established (referring to what would later become the Transfer Price) shall be considered a booked cost of purchased and net interchanged power under section 6j of 1939 PA 3, MCL 460.6j. Specifically, the language in MCL 1047(2)(b)(iv) describes the Transfer Price as "…including, but not limited to, locational marginal pricing." Mr. McGarry's testimony that PSCR recovery costs associated with renewable energy PPAs should reflect the lower of the actual costs of the PPA or the LMP price for electricity is in conflict with 2009 PA 295.

2 T 246-247.

Finally, Mr. Harlow testified that MCL 460.1047(2)(b)(iv) the transfer price mechanism will not allow an electric provider to recover more than the price paid under contract or PPA. 2 T 247.

Detroit Edison's Rebuttal

Kenneth D. Johnston testified in rebuttal to the testimony of AG's witness, Mr. McGarry. Mr. Johnston pointed out that Mr. McGarry's proposal regarding use of the MISA LMP for the actual transfer price "appears to provide no consideration for the value of the capacity provided by the renewable energy resource under a renewable energy contract. The capacity cost is a real cost allocable to the PSCR process and must also be recognized." 2 T 122. Mr. Johnston challenged Mr. McGarry's position that in its plan case, Detroit Edison envisioned using the lower of the actual MISO LMP prices or the transfer price saying, the

> Company always envisioned using the schedule of transfer prices which were approved for a particular renewable energy contract at the time of renewable energy contract review and approval. However . . . the Company did envision that it would transfer to the Detroit Edison PSCR process the lower of the Commission-approved schedule of transfer prices or the renewable energy contract price." *Id.*

In summary, Mr. Johnston testified that the proper transfer price for renewable energy generated in 2009 in accordance with the Detroit Edison/Heritage Renewable Energy Contract is $49.66/MWh. 2 T 123. He indicated that this transfer price is being used because it is the lower of the Commission-approved transfer price or the actual cost of the renewable energy and capacity produced, pursuant to the Detroit Edison/Heritage Renewable Energy Contract. *Id.*

D. Adjustment of Minimum Balance of Accumulated Reserve

The final matter that must be addressed by the Commission is set forth in MCL 460.1049(3)(d), which provides that the Commission must "[a]djust, if needed, the minimum balance of accumulated reserve funds established under section 21, MCL 460.1021."

None of the parties in this matter asserted that an adjustment to the minimum balance of accumulated reserve was necessary at this time.

E. Miscellaneous

In addition to the resolution of the issues set forth above, Mr. Johnston and Angela P. Wojtowicz testified in support of Detroit Edison's request for approval of several policy determinations. Specifically, Detroit Edison seeks guidance from the Commission with regard to four issues: (1) disposition of revenues collected through the Renewable Energy Program 5 cent per meter surcharge pursuant to a November 3, 2004 Order in Case No. U-13808, (2) treatment of certain distribution system expenses, (3) Energy Optimization Credit Substitution, and (4) pre-payment and recognition of renewable energy credits under the customer-owned SolarCurrents program.

1. Disposition of revenues collected through 5 cent per meter surcharge.

Kenneth D. Johnson testified that Detroit Edison would like to reconcile renewable energy revenues in the amount of approximately $1.168 million which was collected through a 5 cent per meter surcharge from customers pursuant to

a November 23, 2004 Order in MPSC Case No. U-13808. 2 T 96. Detroit Edison proposed two alternatives: (1) use the U-13808 5 cent per meter surcharge regulatory liability amount to offset its incremental costs of compliance, or (2) refund the regulatory liability amount to customers through use of a one-time credit to its customers' bills, similar to that accomplished by Consumers Energy pursuant to the July 25, 2006 Amendatory Order in MPSC Case No. U-13843. 2 T 97-98.

Julie Baldwin testified on behalf of MPSC Staff and recommends that Detroit Edison refund the revenue collected and that the refund amount, including appropriate interest, be handled as part of a general rate case. 2 T 225. Ms. Baldwin testified that refunding the revenue was the recommended alternative because Staff is concerned that if the 5 cent per meter fund is used to offset the incremental costs of compliance, the rate impact limits pursuant to MCL 460.1045(2) may be exceeded as the renewable energy plan surcharges are already at the maximum level. *Id.*

This recommendation was not challenged by Detroit Edison or the other parties in this matter.

2. Treatment of certain distribution system expenses

Additionally, witness Johnston, on behalf of Detroit Edison, requested Commission authority to recover costs associated with required upgrades to its distribution system in support of Act 295 activities as incremental costs of compliance. 2 T 98. Mr. Johnston pointed to MCL 460.1047(2)(a)(iii) and (vii) as support for Detroit Edison's position that all distribution system upgrade costs

in Wind Zone Region 4, as well as interconnection and substation costs associated with Detroit Edison's Renewable Energy System construction, should be considered incremental costs of compliance and recoverable under the REP. *Id* at 99.

Staff witness, Julie Baldwin, agreed with Detroit Edison's proposal, but added that only distribution system upgrade costs that are entirely due to meeting the requirements of Act 295 in Wind Zone Region 4 and interconnection and substation costs due to Detroit Edison-owned renewable energy projects should be recovered as an incremental cost of compliance. 2 T 226. She further testified that "to the extent that distribution system upgrades provide increased general system reliability or other benefits to customers beyond satisfying the requirements of PA 295, Staff proposes the recovery of only the portion of the costs fully attributable to PA 295 be included as an incremental cost of compliance and that the Company request recovery of the remaining costs, based on the general benefits, in a general rate case." *Id.*

This recommendation was not challenged by Detroit Edison or the other parties in this matter.

3. Energy Optimization Credit Substitution

Detroit Edison's witness, Kenneth D. Johnston, also testified that Detroit Edison is seeking Commission approval of the substitution of approximately 35,000 Energy Optimization (EO) credits for Renewable Energy Credits pursuant to 460.1027(6). 2 T 106.

Staff witness Julie Baldwin testified that Staff recommends that the Commission approve the substitution. 2 T 226. She explained that Detroit Edison witness Romaine testified in Detroit Edison's EO reconciliation filing in Case No. U-16358 that these EO credits are excess EO credits. *Id.* She noted that MCL 460.1027(6) requires the Commission to consider whether the substitution is cost effective before approval. *Id.* Because there is no incremental cost to obtain these credits and no current sales market, Ms. Baldwin testified that Staff has determined the substitution to be cost effective. *Id.*

This recommendation was not challenged by Detroit Edison or the other parties in this matter.

4. Prepayment and recognition of renewable energy credits under the customer-owned SolarCurrents program

Angela P. Wojtowicz testified on behalf of Detroit Edison regarding Detroit Edison's proposal for pre-payment and recognition of renewable energy credits under the customer-owned SolarCurrents program. Ms. Wojtowicz testified that at the time that the up-front (pre-paid) renewable energy credit payment is made to a SolarCurrents participant, Detroit Edison books a quantity of renewable energy credits to its inventory equal to 50% of the expected total renewable energy credits to be generated over a 20-year period. 2 T 44.

Staff witness Baldwin pointed out that the Commission discussed the SolarCurrents program in its June 2, 2009 order approving Detroit Edison's REP in Case No. U-15806. 2 T 227. She noted that the discussion included Detroit Edison's proposal to have the pre-paid RECs certified as qualified credits

regardless of actual energy production. *Id.* The order approved the SolarCurrents program, but the method for accounting for the pre-paid credits was not addressed. *Id.* Ms. Baldwin testified that, in addition to Detroit Edison's proposal, Staff considered two additional methods for accounting for the REC payment: (1) levelized method where the credits would be evenly spread across each month for the 20-year program period, or (2) hold the credits and match them with monthly solar electricity generation over the program period. *Id.* Ms. Baldwin testified that, "[d]ue to the simplified accounting afforded by the Company's proposal and fact that the Company pays for the credits up front, Staff supports the Company's proposal and will work with Detroit Edison regarding renewable energy credit tracking." *Id.*

This recommendation was not challenged by Detroit Edison or the other parties in this matter.

III.

DISCUSSION AND FINDINGS

A. Compliance with Renewable Energy Standards

Based on the language of MCL 460.1027, Detroit Edison is not required to meet any target energy capacity or energy credit portfolios in 2009. Thus, this ALJ finds that while Detroit Edison has demonstrated that it has advanced forward in its pursuit of compliance with MCL 460.1027, no determination of Detroit Edison's compliance with renewable energy standards is required because there were no compliance requirements for 2009.

B. Adjustment of Revenue Recovery Mechanism for the Incremental Cost of Compliance

1. Incremental Costs of Compliance – Costs Incurred Prior to the Effective Date of Act 295

One of the three (3) disputes in this matter involves Staff's proposed disallowance of $3,088,100 of $8,723,700 in capital costs arising from actions taken by Detroit Edison in 2007 and 2008, prior to the effective dates of Act 295.[14] Staff witness Trachsel testified that $3,088,100 should be removed from the overall level of REP recovery currently sought by Detroit Edison. 2 T 236. Staff argues that while under the Commission's December 4, 2008 Temporary Order in Case No. U-15800, the Commission states that it "intends to consider for cost of recovery renewable energy plan start-up costs incurred by a provider prior to the date of approval of the provider's plan," Act 295 does not provide for recovery of costs incurred before the law was enacted. 2 T 228. Staff, however, does support and recommend recovery of costs incurred after enactment, but before Detroit Edison's REP was approved. *Id.* Staff primarily points to the "well settled principal of statutory construction that statutes are to be applied prospectively unless the Legislature has indicated otherwise." Staff's Initial Brief, p 7, citing *Parnell Seaton v Wayne Co Pros* (*on Sec Rem*), 233 Mich App 313, 316 (1998). The AG and MEC join in Staff's proposed disallowance of all of Detroit Edison's costs arising from actions taken by Detroit Edison, and identified on Exhibit A-7 Revised up through September, 2008.

[14] Staff also initially recommended disallowance of $237,800 in carrying costs associated with the $3.099 million in capital costs. Detroit Edison, however, has since reconsidered its request for recovery of these costs and removed it from request for recovery of costs.

MEC adds to Staff's argument by saying that MCL 460.1047(1) does not provide authority for recovery of the pre-enactment expenditures because, "by definition – they were not incurred to implement a commission-approved REP." MEC's Initial Brief, p 8. MEC continues by arguing that there was no such thing as a renewable energy plan in 2007 and the first nine months of 2008, because the statute was not in existence at that time. *Id.* Thus, MEC argues, Detroit Edison could not "implement" something that had not yet been conceived and that did not exist. *Id.* Finally, MEC asserts that "[w]hile the temporary order did extend backward in time the eligibility of some costs for recovery, it did not purport to include expenditures made prior to the statute. To do so would have included retroactive ratemaking in PA 295."[15] *Id* at 12.

In response, Detroit Edison argues that it is entitled to recovery start-up costs incurred prior to the enactment of Act 295 "as a matter of law, policy and fundamental fairness." Detroit Edison's Reply Brief, p 12. Detroit Edison argues that "[t]he evidentiary record in this proceeding shows that Edison's recovery of start-up costs incurred prior to October 6, 2008 was previously a question of fact in MPSC Case No. U-15806 . . . that resulted in the approval of Edison's existing renewable energy plan activities and revenue recovery mechanism." *Id* at 15-16. Because, Detroit Edison argues, the Commission approved its REP that included these start-up costs incurred by Edison prior to October 6, 2009, "the doctrine of

[15] Interestingly, MEC further notes that the Commission's Temporary Order which states that "the Commission intends to consider for cost of recovery renewable energy plan start-up costs incurred by a provider prior to the date of approval of the provider's plan" is actually in conflict with the statute which only provides for recovery of compliance costs beginning with the Commission approval of the plan. *Id* p 11-12.

collateral estoppel bars the opposition to Edison's recovery of start of costs incurred prior to October 6, 2008." *Id* at 17-18.

Detroit Edison goes on to assert that it is also entitled to recover the disputed costs based on the doctrine of equitable estoppel because of "the facts and circumstances that led Detroit Edison to proactively incur pre-Act 295 expenses," including activities of the Governor, Legislature and Commission which she alleges gave utility providers, such as Detroit Edison, advanced notice that renewable energy generation portfolio standards were on the horizon.[16] 2 T 19-20. According to Detroit Edison, "[g]iven the relatively short time-frames being proposed for compliance, the significant investment and the relatively long lead time required to obtain easements and wind data, as well as construct wind farms, it was both necessary and prudent for the Company to commence renewable energy plan start-up activities in early 2007." *Id* at 20.

Detroit Edison contends that a plain reading of Act 295 also supports its recovery of the disputed start-up costs. In support of this position, Detroit Edison cites MCL 460.1047(1) which states:

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[16] Detroit Edison, in support of this position, sets forth the historical context for the issue, including: (a) a decade of encouragement to pursue renewable generation, 2000 PA 141 where the "Governor, the Legislature and the Commission [] made their intentions fairly clear as to their desire to include renewable generation in the mix of utility generation"; (b) the Commission's order in Detroit Edison's General Rate case, requiring Detroit Edison to implement a 5 cent/meter charge for renewable energy programs in November of 2004 (Case No. U-13808); (c) Commission order in Case No. U-14231 requiring MPSC Staff to convene a Capacity Needs Forum and, as part of that effort, to include renewable generation in its investigation; (d) Staff's January 3, 2006, report to the Commission recommending a portfolio including additional renewable generation; Executive Directive No. 2006-02 wherein the Governor requested the development of Michigan's 21st Century Electric Energy Plan; (e) MPSC Chairman's report to the Governor dated January 31, 2007, which recommended a statutorily required renewable energy portfolio standard; and (f) the introduction of SB 213 in the Michigan Senate in February 2007 which related to electric providers' compliance with a portfolio standard for renewable energy; and the hearings that were held and related activity leading to enactment of Act 295.
Id at 19-20.

> Subject to the retail rate impact limits under section 45, ***the commission shall consider all actual costs reasonably and prudently incurred in good faith*** *to implement a commission-approved renewable energy plan . . . Subject to the retail rate impact limits under section 45,* ***an electric provider whose rates are regulated by the commission shall recover through its retail electric rates all of the electric provider's incremental costs of compliance during the 20-year period beginning when the electric provider's plan is approved by the commission and all reasonable and prudent ongoing costs of compliance during and after that period. . . . .***

Detroit Edison's Reply Brief, p 21 (emphasis added by Detroit Edison).

In this provision of the statute, Detroit Edison argues that their expenditures were reasonable and prudent and further argues there are no temporal limitations upon the application of the term "all," and also argues that the term "shall recover" speaks to the period of time when the costs can be *recovered*, not when reasonable and prudent costs can be *incurred*. *Id* at 22 (emphasis added). Detroit Edison goes on to say that since the statute relates only to the time period in which the disputed costs can be recovered (i.e. post-approval of REP), recovery of the disputed start-up costs does not constitute retrospective application of Act 295.

This ALJ does not find Detroit Edison's arguments to be persuasive. First, as correctly noted by the Staff and MEC, Detroit Edison had no obligation to start preparing a renewable energy plan or otherwise commence any actions toward a renewable energy plan until October 6, 2008, because, until that date, an REP had not been established or otherwise defined by statute. As MEC points out in its Initial Brief, without a statute, any costs expended by Detroit Edison up to the enactment of Act 295, were not spend to "implement" its REP because the

concept of an REP had not even been created by statute. Instead, they were expenditures that Detroit Edison made in anticipation of requirements it *might* need to meet and made a business decision to make those expenditures before there was certainty. There was nothing in the statute or the Temporary Order to establish that recovery of start-up costs would be retroactive to the date Act 295 was enacted. As such, based on the well-settled conclusion that "the Legislature's expression of an intent to have a statute apply retroactively must be clear, direct, and unequivocal as appears from the context of the statute itself," inadequate support exists for allowing Detroit Edison to recover start-up costs that arose prior to Act 295's October 6, 2008, effective date. See *Davis v State Empl Ret Bd*, 272 Mich App 151, 155-156 (2006).

Second, this ALJ disagrees with Detroit Edison's position that collateral estoppel or equitable estoppel prevents the preclusion of the pre-Act 295 expenditures. While Detroit Edison argues that the 2007 and 2008 costs in dispute were used in the preparation of their REP, there is nothing in the REP or other Commission order that specifically identifies those costs as being within the scope of costs to be recovered. Combining this lack of specificity with the absence of a statutorily created right to recover said costs, this ALJ can only conclude that disallowance of those pre-Act 295 expenditures is appropriate. This ALJ does not view Detroit Edison's very general mention of expenditures already made at the time of the preparation and approval of its REP, without more, to have reached the level of having already been "litigated and determined by final judgment," as required for collateral estoppel. Similarly, this ALJ does

not view the activities that preceded the enactment of Act 295 -- from the Governor, Legislature, and Commission's expressed desire to include renewable energy in the mix of utility generation to the introduction of Senate Bill 213 – to be acts that rise to the level of inducing Detroit Edison to make expenditures when, again, there was no certainty as to whether or not those expenditures would be approved for recovery. In fact, it would be the public who would be prejudiced, not Detroit Edison, if expenditures that predated Act 295 were allowed. Thus, this ALJ finds Detroit Edison's argument for collateral estoppel and equitable estoppel without merit.

Finally, Detroit Edison argues that there is an exception to the prospective-only application of a statute and that it is found in *Hughes v Judges' Retirement Bd*, 407 Mich 75 (1979) when purportedly stands for the proposition that "a statute is not regarded as operating retrospectively because it relates to an antecedent [prior] event." As noted in Hughes, "a retrospective law is one which takes away or impairs vested rights acquired under existing laws, or creates a new obligation and imposes a new duty, or attaches a new disability with respect to transactions or considerations already past." In *Hughes,* the issue surrounded a statutory amendment to the Judges' Retirement Act that contained eligibility requirements for certain benefits. In that case, the plaintiff stipulated that he was only seeking prospective application of the statute, but did not want to be foreclosed from receiving a certain benefit by having to re-establish eligibility after passage of the statute. The court found that a retirant's

period of judicial service prior to passage of the act is permitted to be taken into consideration in determining eligibility for its benefits.

This ALJ finds that Detroit Edison's proposed application of the exception articulated in Hughes to their proposed recovery of costs which predated Act 295 to be without merit as this exception is markedly different in *Hughes* than its proposed application in this case. In fact, this ALJ finds that to allow Detroit Edison to recover from ratepayers sums expended before enactment of Act 295 creates a "new obligation and imposes a new duty," on ratepayers "with respect to transactions or considerations already past," and is, thus, impermissible retroactive application of Act 295.

This ALJ, therefore, recommends that the Commission adopt the proposal, offered by the Staff and supported by both the AG and MEC, to disallow from recovery the $3,088,100 in capital expenses incurred by the utility prior to the effective date of Act 295.

2. Incremental cost of compliance for the amount paid by Detroit Edison to Heritage Stoney Corner Wind Farm – estimated vs actual energy and capacity

The second dispute in this matter involves Staff's proposed adjustment to the incremental cost of compliance for the amount paid by Detroit Edison to Heritage Stoney Corners Wind Farm. As a basis for this recommendation is Staff witness Trachsel's proposal that this reconciliation should reflect actual energy and capacity delivered under the Heritage Renewable Energy Contract, based upon invoice amounts rather than the estimated amounts recorded on Detroit Edison's books for 2009. The AG supports this recommendation.

Detroit Edison argues that, consistent with the PSCR process, it believes that the estimated amounts that it actually recorded on the books should be used for the reconciliation. It argues that the estimates recorded in 2009 were trued up to the invoiced amount in 2010 business and the adjustment should be reflected in the 2010 reconciliation. Detroit Edison's Reply Brief, p 11. Detroit Edison, however, states that if the Commission decides that the Staff's adjusted amounts should be used for the 2009 reconciliation, then "the Company will exclude the 2009 adjusting entry recorded in 2010 business from its 2010 renewable energy reconciliation" and notes that "[t]he record is closed in the Company's 2009 PSCR Reconciliation Case No. U-15677-R and, depending on the Commission's order in that proceeding, the Company's 2010 PSCR and Renewable Energy Cost Reconciliation proceedings may or may not agree." Detroit Edison's Reply Brief, p 11-12 and fn 7. In fact, Detroit Edison states "Staff's adjustments reflect the Commission-approved transfer price of $49.66/MWh and only further undermine AG witness McGarry's concern that the Company used a transfer price different from that amount." *Id.*

This ALJ finds that, at the present time, in REP reconciliation cases, there is no order of the Commission or other statutory basis that would mandate or otherwise permit the use of a process which is consistent with the PSCR process or would otherwise make the practice of recording estimates in one year and truing them up to invoiced amounts in the following year, with the adjustments being reflected in the following year's reconciliation, a more preferred method of accounting when actual energy and capacity delivered, based on invoice

amounts, are available to Detroit Edison. Further, this ALJ notes Detroit Edison does not argue that Staff's proposed adjustments will cost Detroit Edison money or cause ratepayers to pay more and, further, acknowledges that the Staff's proposed adjustment will actually resolve a concern by the AG over the issues related to transfer price (which is addressed below). Thus, this ALJ finds that there is adequate basis for Staff's proposed adjustment.

C. Retail rate impacts, regulatory assets and revenue recovery mechanism surcharge

Detroit Edison argues that retail rate impacts have not been exceeded in 2009; that a regulatory asset has not, and is not forecasted to be, accrued; and that the currently approved revenue recovery mechanism surcharge is appropriate and should not be adjusted. Detroit Edison also asserts that renewable energy plan surcharges are already at their maximum level and, therefore, not in excess of the maximum retail impacts pursuant to MCL 460.1045(2). This is not disputed by Staff, the AG or MEC. Thus, this ALJ finds that the current revenue recovery mechanism surcharge is appropriate and need not be adjusted at this time.

D. Establishment of Price Per Megawatt Hour to be Transferred to PSCR

The final area of dispute in this matter stems from the AG's assertion that the Commission should adopt what Detroit Edison and Staff both contend is an erroneous methodology for establishing the transfer price applied to all renewable energy and capacity included in Detroit Edison's PSCR expense.

The AG contends that the actual transfer price for 2009 should be $27.31/MWh instead of the $49.66/MWh that is supported by Detroit Edison and Staff. AG's Initial Brief, p 2.

In support of this position, the AG's witness, Mr. McGarry, takes the position that,

> only actual renewable energy costs up to the available alternative, and more economic energy resources should be transferred to PSCR expenses. If the cost of renewable energy exceeds the economic dispatch cost, the difference between the actual cost of renewable energy and economically dispatched energy should remain in and be recovered as an incremental cost of compliance via renewable energy surcharges under 2008 PA 295.

2 T 187.

Mr. McGarry argues that.

> to establish the appropriate transfer price the Commission must consider factors including, but not limited to, projected capacity, energy, maintenance, and operating costs; information filed under section 6j of 1939 PA 3, MCL 460.6j; and information from wholesale markets, including, but not limited to, locational marginal pricing (LMP) . . . [and] the Commission must set an annual actual transfer price in each annual RE plan reconciliation case.

2 T 191; AG's Initial Brief, p 8, 12.

According to the AG, its proposed adjusted transfer price ($27.31) should be multiplied by the 2009 actual volume (not the estimated volume) of 3,790.354 MWh to arrive at a total actual renewable energy PSCR expense of $103,514. AG's Initial Brief, p 17. The AG concludes by asserting that failing to make this change would ignore the fact that, while projected costs are used in computing transfer costs in the course of renewable energy plan cases, such computations undertaken in REP reconciliations "must be based upon actual costs." *Id* at 8.

In contrast, and as noted above, Detroit Edison and the Staff each contend that applicable statutes and prior Commission orders support finding that the per MWh price at which renewable energy is transferred to a utility's PSCR process should not be limited to the LMP. Staff's initial brief, p. 10. To find otherwise, they assert, would conflict with both the language and the intent of Act 295, while also ignoring Commission rulings dealing expressly with this issue. *Id;* Detroit Edison's Reply Brief, p 5-8.

The ALJ agrees with Detroit Edison and the Staff, and finds that the AG's arguments with regard to computing the appropriate transfer price to be applied in this proceeding must be rejected. This finding is based upon the following three factors.

First, the AG's claim that the transfer price must effectively be limited to the LMP conflicts with the specific provisions, as well as the overall intent, of Act 295. Section 47 of Act 295 allows the utility to recover the incremental cost of all renewable energy purchased in accordance with the Act's requirements, and further requires a portion of those costs to be recovered through the utility's PSCR process. MCL 460.1047. Of that Section, the most salient language with regard to this issue is that found in subpart (2)(b)(iv), which provides, in pertinent part, that:

> After providing an opportunity for a contested case hearing for an electric provider whose rates are regulated by the commission, the commission shall annually establish a price per megawatt hour. In addition, an electric provider whose rates are regulated by the commission may at any time petition the commission to revise the price. In setting the price per megawatt hour under this subparagraph, the commission shall consider factors including, but not limited to, projected capacity, energy, maintenance, and

> operating costs; information filed under section 6j of 1939 PA 3, MCL 460.6j; and information from wholesale markets, including, but not limited to, locational marginal pricing. This price shall be multiplied by the sum of the number of megawatt hours of renewable energy and the number of megawatt hours of advanced cleaner energy used to maintain compliance with the renewable energy standard. The product shall be considered a booked cost of purchased and net interchanged power transactions under section 6j of 1939 PA 3, MCL 460.6j. For energy purchased by such an electric provider under a renewable energy contract or advanced cleaner energy contract, the price shall be the lower of the amount established by the commission or the actual price paid and shall be multiplied by the number of megawatt hours of renewable energy or advanced cleaner energy purchased. The resulting value shall be considered a booked cost of purchased and net interchanged power under section 6j of 1939 PA 3, MCL 460.6j.

MCL 460.1047(2)(b)(iv) (emphasis added).

In past orders, the Commission has labeled this price the "transfer price." Moreover, Section 49 of Act 295 provides that the Commission must, at least in the case of regulated utilities like Detroit Edison, also review that price in the context of the utility's annual renewable energy plan's cost reconciliation proceedings. MCL 460.1049(3)(c). Read together, Sections 47 and 49 of the Act clearly indicate that the lowest level at which a utility's transfer price can be set is the lower of the amount previously established by the Commission in the course of a utility's renewable energy plan process or the actual price paid by the utility.

Moreover, pre-approval of a schedule of transfer prices (as opposed to setting each price following the end of the period in question, as the AG would have the Commission do) better comports with the overall intent of Act 295. As noted by the Staff, approving such prices in advance "provides the Company with a known number for planning its renewable energy resource procurement"

required by the Act. Staff's initial brief, p. 11. This, the Staff further notes, "helps mitigate risk" associated with a fluctuating LMP market, and thus gives "the Company [] the ability to fulfill it obligations under Act 295." *Id.* It must, therefore, be concluded that the pre-set price established in the course of Detroit Edison's renewable energy plan process, and not the subsequently-determined LMP, is the appropriate floor for a utility's transfer price.

Second, prior rulings by the Commission expressly support reaching such a conclusion. For example, in the course of the Commission's August 25, 2009 order in Case No. U-15806 (which involved a review of The Detroit Edison Company's request for proposals regarding the potential supply of renewable electric capacity and energy), it was stated that:

> The Staff similarly asserts that there is no merit to the Attorney General's argument that the Commission lacks authority to establish transfer prices as a floor. Nevertheless, the Staff notes that while the June 2, 2009 order in this case, and the December 4, 2008 order in Case No. U-15800, addressed certain aspects of the transfer price, the issue of how the transfer price is to be used in the case of a third-party PPA has not been specifically addressed. The Staff therefore urges the Commission to clarify that at the time any PPA is approved by the Commission, the schedule of transfer prices most recently approved shall become the floor price for PSCR recovery. For each contract year, if the most recently approved annual transfer price is higher than the schedule of transfer prices for a particular contract, then the most recently approved annual transfer price would be recovered via the PSCR process. However, in the event that the contract price is less than the transfer price, the contract price would be the recoverable PSCR cost. This method would be applicable to renewable engineering, procurement, and construction contracts, or contracts for renewable energy systems that have been deployed by third parties for transfer of ownership to an electric provider, provider-owned projects, and third party PPAs.
>
> * * *

> The Commission agrees with the Staff's clarification and adds that it appears that the Attorney General fundamentally misunderstands the concept and operation of the transfer price in renewable energy procurement. Pursuant to Section 47(2)(b) of Act 295, the Commission is required to annually set a transfer price for renewable costs that will flow through the company's PSCR. The transfer price is simply a mechanism for estimating and allocating the reasonable and prudent costs for renewable energy between the PSCR and the REP surcharge, whether these costs are associated with renewable self-build projects, projects that are built by third-parties and transferred to the utility, or PPAs. As with any other PPA for electric power, ratepayers pay the reasonable and prudent costs set forth in the contract approved by the Commission and no more. There is no reason to view a PPA for renewable energy in any different fashion than, for example, the request by Consumers Energy Company for approval of a 20-year PPA for the purchase of nuclear power. See, March 27, 2007 [order] in Case No. U-14992. The primary reason for setting the transfer price schedule as a floor for any project or PPA is to provide the utility with a means of planning its renewables acquisition program to meet its renewable portfolio targets without exceeding the caps on the surcharge defined in Act 295.

August 25, 2009 order in Case No. U-15806, pp. 11-12 (emphasis added).

Third, a careful reading of Section 49(3)(c) belies the AG's claim that only actual expenses (not projected ones) are to be used when computing the transfer price in a renewable energy reconciliation case like this. Specifically, that provision indicates that the Commission shall establish "a price per [MWh] for renewable energy capacity and renewable energy" to be recovered through the PSCR process in the manner "outlined in Section 47(2)(b)(iv)," which is the renewable energy plan proceeding. Because the transfer price calculation performed in the plan case clearly provides for the use of both projected and actual expenses, and because the same methodology is to be applied in the reconciliation case, all claims to the effect that only actual costs can be used, are incorrect.

E. Miscellaneous

With regard to the four (4) matters for which Detroit Edison seeks guidance from the Commission ((1) disposition of revenues collected through the Renewable Energy Program 5 cent per meter surcharge pursuant to a November 3, 2004 Order in Case No. U-13808, (2) treatment of certain distribution system expenses, (3) Energy Optimization Credit Substitution, and (4) pre-payment and recognition of renewable energy credits under the customer-owned SolarCurrents program), this ALJ finds that the recommendations of the Staff are well reasoned and not in dispute and should be adopted.

IV.

CONCLUSION

Based upon the foregoing, the ALJ recommends that the Commission issue an order finding that:

1. Detroit Edison is in compliance with renewable energy standards;

2. Any and all start-up/capital costs (and associated carrying charges) incurred by Detroit Edison prior to the effective date of Act 295 should be excluded from recovery;

3. This reconciliation should reflect the actual energy and capacity delivered under the Heritage Renewable Energy contract (Heritage Stoney Corners Wind Farm) based upon invoiced amounts (3,790.354 MWh) rather than the estimated amounts recorded on Detroit Edison's books for 2009 (1,665.2 MWh);

4. The Commission-approved Revenue Recovery Mechanism Surcharge does not require adjustment at this time;

5. A Transfer Price of $49.66/MWh be utilized to determine the amount to be transferred to Detroit Edison's PSCR proceeding for the Detroit Edison/Heritage Renewable Energy Contract (Heritage Stoney Corners Wind Farm);

6. Adjustment of the minimum balance of accumulated reserve is not required at this time;

7. Detroit Edison should refund the revenue collected pursuant to November 23, 2004 Order in MPSC Case No. U-13808, including appropriate interest, and that the refund amount be handled as part of a general rate case;

8. Detroit Edison may recover, as incremental costs of compliance, costs associated with distribution system upgrades so long as those costs are entirely due to meeting the requirements of Act 295 in Wind Zone Region 4 as well as interconnection and substation costs due to Detroit Edison-owned renewable energy projects;

9. To the extent that Detroit Edison's distribution upgrades provide increased general system reliability or other benefits to customers beyond satisfying the requirements of Act 205, Detroit Edison may recovery only the portion of the costs fully attributable to Act 205 as incremental costs of compliance and that Detroit Edison request recovery of remaining costs in a general rate case;

10. The substitution of approximately 35,000 energy optimization credits for renewable energy credits pursuant to MCL 460.1027(6) is appropriate; and

11. Detroit Edison's plan for pre-payment and recognition of renewable energy credits under the customer-owned SolarCurrents program is appropriate.

MICHIGAN ADMINISTRATIVE HEARING SYSTEM
For the Michigan Public Service Commission

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Theresa A. Sheets
Administrative Law Judge

July 21, 2011
Lansing, Michigan- drr